

## AMENDMENT TO AGREEMENT

This AMENDMENT is made and entered into as of October 24, 2008, by and between Starwood (M) International, Inc. ("Licensor") and Parker Palm Springs LLC ("Licensee"). This Amendment supplements that certain Agreement dated the 28<sup>th</sup> day of May 2003 (the "Agreement") between the parties predecessors, relating to a license to operate a Le Parker Meridien Palm Springs located at 4200 East Palm Canyon Drive, Palm Springs, CA (the "Hotel").

The parties agree as follows:

1. To the extent there is any direct conflict between the Agreement and this Amendment, this Amendment shall govern and control, otherwise, the conflicting provisions in the Agreement and this Amendment shall be read to the extent possible to give effect to both.
2. The Agreement is amended by adding the following provisions to the present Agreement as Article VIII regarding the Starwood Preferred Guest Program:

### ARTICLE VIII

1. Definitions. (a) **Initial Term** – October 24, 2008 through December 31, 2009.  
(b) **Extended Term** – January 1, 2010 through and including the date on which the Agreement terminates or expires, inclusive of all extensions to the Agreement.  
(c) **SPG Fee** – the fee Licensor charges from time to time for Licensee's participation in the SPG Program. As of the date of this Agreement, the SPG Fee is 5% of an SPG member's qualified guest folio charges during his or her stay at the Hotel, provided, however, that if an SPG member enrolls in the SPG Program at the Hotel, there is no charge for such SPG member's initial stay at the Hotel upon enrollment  
(d) **SPG Occupancy**- the percentage of occupied rooms that are occupied by members in the SPG Program where SPG Program loyalty points are earned on the stay.  
(e) **SPG Program** – the Starwood Preferred Guest program, or any other frequency guest or customer loyalty program established by Licensor or any of its affiliates.  
(f) **Starwood** - Starwood Hotels & Resorts Worldwide, Inc.
2. Participation in SPG Program. Licensee desires to participate in the SPG Program on the terms set forth below:  
(a) Term of Participation. Hotel shall participate in the SPG Program for the Initial Term, and Licensor will cause the SPG Program to provide customary marketing support to announce the entry of both Parker hotels in the SPG Program, including placements in e-statements and on SPG-related websites. Specific initial placements include a minimum of one above-the-fold placement in a global SPG e-statement and an American Express co-brand card statement, hotel photography featured prominently in one main placement on the SPG.com home page for a period of at least two weeks, one post on thelobby.com, and a minimum of one offer placement on the SPG.com home page targeted to specific feeder markets for a period of at least one week. If the Hotel meets its goal of an average

of 40% SPG Occupancy during the Initial Term, then the Hotel's participation in the SPG Program shall extend automatically for the Extended Term. If the Hotel does not meet its goal of an average of 45% SPG Occupancy during the Initial Term, then the Hotel's participation in the SPG Program shall terminate automatically on the last day of the Initial Term, unless Licensee, in its sole discretion, elects to extend the Initial Term for the Extended Term. If Licensee makes such election, such election shall be irrevocable.

(b) Compliance with SPG Program. Licensee agrees to comply with all rules, standards, policies and procedures governing the SPG Program as the same are in effect from time to time during the Initial Term, and, if applicable, the Extended Term. Licensee acknowledges that the Hotel is being designated a Category 6 hotel in the SPG Program, and such category may change from time to time.

(c) Licensee Acknowledgements. Licensee acknowledges and agrees that (i) the SPG Program seeks to promote the goodwill and public image of Le Meridien brand and other brands and businesses that are owned, operated, managed or franchised by Starwood or its affiliates, (ii) Licensor, Starwood or any of their affiliates or designees shall have the exclusive right to create, maintain and administer the SPG Program, (iii) Licensee acknowledges and agrees that the SPG Program is owned by Starwood and is intended to enhance general public recognition of the Meridien Intellectual Property and other marks for the benefit of Le Meridien brand hotels and the other Starwood brand hotels, and (iv) neither Licensor, Starwood, nor any of their Affiliates or designees, undertakes any obligations in administering the SPG Program to ensure that any licensee or hotel benefits directly or pro rata from the SPG Program. Licensor reserves the right to terminate the SPG Program and in such event will use all remaining funds in the SPG Program as contemplated by this Agreement. So long as the SPG Program is in effect, Licensee shall not create or participate in a similar program for itself nor participate in a similar program sponsored or administered by a third party.

(d) SPG Fees. (i) Licensee shall pay the SPG Fees (as the same may be modified from time to time) to Licensor or its affiliate or designee on a monthly basis, one month in arrears, for each month during the Initial Term, and if applicable, the Extended Term.

(ii) All SPG Fees paid by Licensee shall be part of the SPG Program, and deposited in accounts under the control of Licensor, Starwood or any of their respective affiliates or designees. The SPG Fee shall be separately accounted for, with separate books and records, but may be commingled with Licensor's other funds or kept in a separate account. Licensor shall make available, upon request from Licensee, annual unaudited statements of contributions collected and expenses incurred for the SPG Program. Licensor may elect to accumulate funds in the SPG Program for such periods of time as Licensor deems necessary or appropriate, with no obligation to expend all funds received in any fiscal year during such fiscal year. Licensor shall be entitled to all interest, if any, earned on funds in the SPG Program. Licensor may advance monies to the SPG Program and charge the SPG Program interest on such advances at one percent above the prime rate then designated by a major bank selected by Licensor (or if no such rate is then so being designated, at such rate as reasonably determined by Licensor) and may authorize repayment of such advances from the SPG Program, all in accordance with such terms as Licensor deems appropriate. Licensor assumes no direct or indirect liability or obligation with respect to the direction or administration of the SPG Program. Licensor does not act as trustee or in any other fiduciary capacity with respect to the SPG Program, and the Parties do not intend that the SPG Program constitutes a trust.



- (iii) The amounts charged to the Hotel for its participation in the SPG Program shall be determined on the same basis as such amount is determined for substantially all Le Meridien brand hotels, and may include amounts reasonably calculated to cover the overhead and other costs incurred by Licensor and its affiliates (as applicable) in providing (or arranging for the provision of) the SPG Program, including (i) compensation and employee benefits of corporate personnel directly involved in providing the SPG Program, (ii) recovery of development costs and promotion costs for the SPG Program, (iii) costs of technology employed in providing the SPG Program, and (iv) costs of operating, maintaining and upgrading the SPG Program. Licensor shall have the right to increase or decrease the SPG Fee from time to time, upon 60 days notice to Licensee, provided that any such changes in the SPG Fee are applied to substantially all of the Le Meridien brand hotels. Licensor, its affiliates and their designees may realize a profit on the SPG Program and related products, services and programs (by way of a trademark license fee, a mark-up fee, rebate, commission or other form of compensation).
- (e) Modification of SPG Program. Licensee acknowledges that Licensor needs the flexibility to modify the SPG Program, to respond to market trends, customer demands, economic conditions, technological advances, applicable law and other factors affecting the operation of Le Meridien brand hotels. Accordingly, Licensee agrees that Licensor shall have the right to (i) modify the structure, scope, delivery, fees, costs and terms of the SPG Program, (ii) add a new, modify the current or discontinue the existing SPG Program, as Licensor deems advisable from time to time, each such change to be implemented at Licensee's expense upon not less than 60 days notice to Licensee, provided that any such changes in the SPG Program are similarly applied to substantially all of the Le Meridien brand hotels.
- (f) Early Termination by Licensee. If Licensee, acting in good faith, believes that Licensor (i) made an unreasonable change in the rules, standards, policies and procedures governing the SPG Program, or (ii) increased the SPG Fee by an unreasonable amount, taking into account benefits of the SPG Program to participating hotels, then Licensee, in its sole discretion, may terminate Hotel's participation in the SPG Program by giving Licensee at least 180 days prior written notice, which notice shall state with specificity the change in the rules, standards, policies and procedures governing the SPG Program or the increase in the SPG Fee which Licensee believes is unreasonable.

If Licensor, acting in good faith, agrees with Licensee, then this Amendment shall terminate at the expiration of the 180 day notice period. If Licensor disagrees with Licensee's position, then Licensor shall notify Licensee in writing and the parties shall set up a meeting between the VP, Loyalty Marketing at Starwood and the General Manager of the Hotel. If Licensor, after meeting and discussing Licensee's concerns in good faith, agrees with Licensee, then this Amendment shall terminate at the later of (i) 180 days after Licensee first notified Licensor of the dispute, or (ii) 30 days after the parties reach such mutual agreement.

If the parties, after meeting and discussing their concerns in good faith, still do not agree, then Licensee may request a meeting between the SVP, Distribution Loyalty Marketing at Starwood and the Hotel's owner. If after such senior level meeting and discussions in good faith, Licensor agrees with Licensee, then this Amendment shall terminate at the later of (i) 180 days after Licensee first notified Licensor of the dispute, or (ii) 30 days after the parties reach such mutual agreement.

If the parties do not agree after taking to steps set forth above, Licensee may submit the dispute about Licensor's unreasonableness to arbitration with the American Arbitration Association in New York, New York, where one arbitrator shall make the determination. In the arbitration, Licensee shall have the burden of proving that Licensor acted unreasonably. If the arbitrator rules in favor of Licensee, then this amendment shall terminate on the later of (i) 180 days after Licensee first notified Licensor of the dispute, or (ii) 30 days after the arbitration ruling. The arbitrator may, in its reasonable discretion, allocate the payment of the filing fees between the parties, and order the non-prevailing party to pay all or a portion of the reasonable attorneys' fees and expenses of the prevailing party.

(g) Early Termination by Licensor. If (i) Hotel does not comply with the terms of this Amendment, or (ii) Hotel or the Le Parker Meridien Hotel in New York do not comply with the terms of the SPG Program, then Licensor, at its sole discretion, may terminate Hotel's participation in the SPG Program by giving Licensee at least 30 days prior written notice of such termination, and Licensee's participation shall automatically terminate on the 31st day following notice if Hotel does not cure the default during such 30 day notice period. If the Hotel breaches and then cures its non-compliance with the terms of the SPG Program on three separate occasions, on the fourth such occasion, at Licensor's option, may terminate the Hotel's participation in the SPG Program immediately and Hotel shall not have an opportunity to cure the non-compliance.

(h) Effect of Termination. Upon termination of this Amendment, for any reason, Licensee shall honor all reservations made by SPG members on or before the last day of the term of this Amendment, even if such reservations are for stays after the end of the Term.

3. Except as expressly stated in this Amendment, no further additions, modifications or deletions to the Agreement are intended by the parties or made by this Amendment. All other terms and conditions of the Agreement remain in full force and effect.

*[Signatures commence on the following page]*

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first  
above written:


**LICENSOR:**

**STARWOOD (M) INTERNATIONAL, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**LICENSEE:**

**PARKER PALM SPRINGS LLC**

By:  \_\_\_\_\_  
Name: Steven Pipes  
Title: Vice President

Attest: \_\_\_\_\_